

STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
**TITLE 16. BOARD OF BARBERING AND COSMETOLOGY**

INITIAL STATEMENT OF REASONS

**Hearing Date:** March 21, 2011

**Subject Matter of Proposed Regulations:** Disciplinary Guidelines

**Section(s) Affected:** Section 972, California Code of Regulations.

**Specific Purpose**

Amend Section 972, California Code of Regulations

The specific purpose of this proposed regulatory action by the Board of Barbering and Cosmetology (hereinafter "Board") is to revise the disciplinary guidelines followed by the Board of Barbering and Cosmetology (hereinafter the "Board").

**Factual Basis/Rationale**

In the years since the implementation of the Board's 1998 edition of its Disciplinary Guidelines, a number of revisions have been identified as necessary by the Board. The following revisions are meant to clarify the guidelines, correct oversights and include changes in disciplinary policy that the Board has determined are necessary to protect California consumers from harm and insure the due process rights of licensees in disciplinary cases.

The following chart details the Board's proposed changes and why they are being sought:

SUBJECT	CURRENT DOCUMENT PAGE(S)	PROPOSED DOCUMENT PAGE(S)
<b>Table of Contents</b>	<b>N/A</b>	<b>2-3</b>
Table of Contents are revised to reflect new page numbers, subject headings and layout		
<b>Introduction</b>	<b>1</b>	<b>4</b>
The wording of the introduction has been revised to reflect that what was a Bureau in 1998 is now a Board. It also stresses the Board's role as a consumer protection agency and has been written in what the Board believes is a more conversational tone that better explains the purpose of the guidelines to lay people. It also clarifies that that references to the "Board" also means the Board's staff.		
<b>Factors to Be Considered</b>	<b>3</b>	<b>7</b>
This section has been expanded to include factors for denying a license to an applicant. The current document does not address license denial cases, which are commonly brought by the Board against applicants.		

<b>Mitigation Evidence</b>	<b>N/A</b>	<b>8</b>
This is a new section that corrects an oversight in the current document concerning a respondent's right to submit mitigating evidence.		
<b>Standard/Optional Conditions of Probation</b>	<b>4-7,</b>	<b>9-10, 29-35</b>
<p>The current guidelines list standard and optional conditions of probation along with recommended language for disciplinary orders that also serves to define those conditions for the benefit of licensees. These are presented at the beginning of the pamphlet. However, the Board believes these pages are best moved to the back of the pamphlet in order to bring what it believes is the meat of the guidelines, the "Violations and Recommended Actions" section, to the fore. The proposed guidelines reflect this editing decision: the recommended language has been moved to the back of the pamphlet. However, since the recommended actions mention the terms of probation for each violation by number, the Board deems it necessary to preface the recommended action section with a "quick hit" list of the probation terms. The Board also removed references to "and/or suspension order," which are not necessary.</p> <p>The proposed guidelines also contain several revisions to the existing conditions, and adds three new standard conditions and four new optional conditions. The revisions to the conditions are as follows:</p> <ul style="list-style-type: none"> <li>(1) <u>Suspension of License</u>: This clarification of the suspension condition is necessary to prevent probationers from claiming they are unemployed to avoid having to serve a suspension period and post the required suspension sign.</li> <li>(3) <u>Cost Recovery</u>: This revision is necessary to ensure that the Board will recover its cost of investigating and prosecuting the case. Currently, the Board often incurs additional legal expenses for preparing documents to extend the probation period until costs are paid in full. In addition, fewer cases will require referral to the Franchise Tax Board's Intercept Program. The revision also closes the loophole for probationers leaving the state or filing bankruptcy.</li> <li>(4) <u>Quarterly Reports of Compliance</u>: This revision is necessary to clarify the quarters and the submission dates. It also underlines the importance of submitting a true and complete quarterly reports, which is the mechanism by which the Board maintains communication with the probationer over such matters as changes in their employment status or address, or the sale of their business.</li> <li>(10) <u>Comply with the Board's Probation Program</u>: This revision is necessary to clarify that the probationer must comply with the Board's probation program in order to demonstrate his or her commitment to rehabilitation and to correction the problems which led to the disciplinary action.</li> <li>(13) <u>Residency Outside of the State</u>: This revision is necessary to eliminate the need to monitor out-of-state probationers for an indefinite amount of time. Currently, the cases of out-of-state probationers are tracked for license renewals, address changes while they are outside California. But in some cases, the probationer never returns.</li> <li>(14) <u>Failure to Practice-California Resident</u>: This is a new standard condition. It is necessary to allow the Board to monitor the probationer to determine if he or she can provide professional services in a competent manner. It also ensures that the probationer will not complete probation without being fully monitored through regular inspections at his or her place of employment. It also prevents probationers from "sitting out" their probation term by not working, which prevents the Board from determining if probationers understand the violation for which they were disciplined and are complying with the rules and regulations governing their trade.</li> <li>(15) <u>Maintain Valid License</u>: This is a new standard condition. It is necessary to stress that licensees must maintain a valid license at all times while providing services, or face additional disciplinary action.</li> </ul>		

- (16) License Surrender: This is a new standard condition that is necessary to allow probationers to surrender their license if they are unable to comply with the disciplinary order's terms and conditions. This eliminates the need for additional, costly administrative action to revoke probation.
- (8) Reimbursement of Probation Program: This is a new optional condition that is necessary should the Board wish to require payment for monitoring the probationer. The Board believes the probationer may be more inclined to follow the program if he or she is required to pay for it.
- (9) Manager or Licensee in Charge: This is a new optional condition that is necessary should the Board wish to ensure that probationers are not put in charge of an establishment until they demonstrate they will comply with and understand the Board's rules and regulations. It would also eliminate the possibility that a probationer who owns a salon could transfer the establishment license to a relative or another individual but continue to run the business as the licensee in charge.
- (10) Abstain from Controlled Substances/Submit to Biological Fluid Testing: This is a new optional condition that could be necessary should a disciplinary case involve the abuse of controlled substances by the respondent. In those instances, the Board may need to require testing in order to protect the public.
- (11) Abstain from Alcohol/Submit to Biological Fluid Testing: This is a new optional condition that could be necessary should a disciplinary case involve the abuse of alcohol by the respondent. In those instances, the Board may need to require testing in order to protect the public.

<b>Grounds for Disciplinary Action and Recommended Penalties</b>	<b>8-16</b>	<b>11-25</b>
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This section has been renamed as "The Barbering and Cosmetology Act Violations and Recommended Actions" in the proposed guidelines. The Board has determined that the new heading more accurately describes the section. There are also a number of proposed changes to the recommendations:

- The Board has determined that some changes in the recommended penalties were warranted. These include adding additional standard terms of probation for all violations to reflect that there are now 16 standard terms. For violations of California Code of Regulations Sections 480(a)(1), 480(a)(2), 480(a)(3), 480(c), and 496, the standard terms are numbers 4-16, given that those who violate these sections do not yet possess a license at the time the terms of probations are imposed.
- The proposed list of recommended penalties now includes penalties for violations of California Code of Regulations Sections 480(a)(1), 480(a)(2), 480(a)(3), 480(c). The Board determined that violations of these sections were frequent enough to warrant being included in the guidelines.
- Suspensions now specify that the suspension terms cover consecutive working days, in order to prevent licensees from serving their suspension term during their days off.
- 7404(a)(1), B&P Code — The number of suspension days has been increased to 10 from five. The Board believes the longer term is appropriate because serious consumer harm is often involved.
- 7404(a)(2), B&P Code — Retaking the written exam (with its emphasis on safety issues and Board regulations) is now included as an optional term. Again, Board members have determined that because serious consumer harm is often involved in these violations, the additional term is necessary.
- 7404(a)(3), B&P Code — The probation term has been reduced to three years from five years. The Board believes this is necessary to account for the fact that criminal probation has already been imposed in many of these cases, reducing the need for the longer term. The Board, however, kept the five-year term in cases involving sexual misconduct

<p>because of the nature of the crime. It also increased the length of probation in cases where the crime was committed by a licensee in a licensed establishment from three to five years.</p> <ul style="list-style-type: none"> <li>• 7404(b), B&amp;P Code — The Board has determined that a three-year probation term was more appropriate than the existing two-year term.</li> <li>• 7320 and 7320.2, B&amp;P Code — The Board has determined that given the severity of the offense, a probation term of five years rather than the existing two-year term is appropriate.</li> <li>• 7404(c), B&amp;P Code — The Board has determined that given the severity of health and safety regulations, a three-year probation term is more appropriate than the existing two-year term. The Board also specifies that the written licensing exam must be retaken because that exam stresses health and safety issues.</li> <li>• 7404 (d), B&amp;P Code — The Board believes a three-year probation period is more appropriate.</li> <li>• 7404(g), B&amp;P Code — The Board has set the suspension period at 10 consecutive working days, rather than two calendar weeks. The change shouldn't have any net effect on the actual work hours missed.</li> <li>• 7404(i), B&amp;P Code — The Board believes that the current recommendation of a 10-day suspension was too steep given the offense.</li> <li>• 7404(l) — The Board has determined that the existing 30-day suspension was too severe and that five days was a more appropriate term.</li> <li>• 496, CCR — The license suspension term has been moved from the “maximum” list of terms to the list of “minimum” penalties. It also reduces the 30-day suspension to 10 working days. The Board also removed the optional requirement that the prospective licensee take the licensing exam because some respondents may not wish to do this.</li> </ul>		
<p><b>Other Situations in which Revocation is the Recommended Penalty</b></p> <p><b>Conditions of Probation</b></p> <p><b>Probationary Conditions</b></p> <p><b>Introductory Language for Disciplinary Orders</b></p> <p><b>Recommended Language for Applicants and Reinstatements</b></p> <p><b>Recommended Language for Cost Recovery for Surrenders</b></p>	<b>N/A</b>	<b>26-28, 36-37</b>
The Board has determined this material is necessary to better explain the guidelines.		

#### Underlying Data

- Current edition of the Board of Barbering and Cosmetology's Disciplinary Guidelines, dated September 1998
- Proposed edition of the Board of Barbering and Cosmetology's Disciplinary Guidelines, dated October 2010

**Business Impact**

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

**Consideration of Alternatives**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation. The alternatives included not updating the guidelines. However, the Board concluded that doing so would fail to offer the appropriate guidance for assessing disciplinary penalties or explaining the Board's disciplinary policies.